

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ABBOTT CARDIOVASCULAR SYSTEMS INC.)
and ABBOTT LABORATORIES INC.,)

Plaintiffs,)

V.

MEDTRONIC VASCULAR, INC. and)
MEDTRONIC USA, INC.,)

Defendants.)

C. A. No. 98-80 (SLR)
(Consolidated with C.A. No. 98-314
(SLR) and C.A. No. 98-316 (SLR))

**ABBOTT'S OPPOSITION TO MEDTRONIC'S MOTION FOR LEAVE TO FILE
SURREPLY TO ABBOTT'S MOTION TO LIFT STAY OF PROCEEDINGS ON
ABBOTT'S MOTION FOR PERMANENT INJUNCTION
AS TO MEDTRONIC'S ENDEAVOR**

Plaintiffs Abbott Cardiovascular Systems Inc. and Abbott Laboratories Inc. (collectively “Abbott”) respectfully oppose Medtronic’s Motion for Leave to File Surreply to Abbott’s Motion to Lift Stay of Proceedings on Abbott’s Motion for Permanent Injunction as to Medtronic’s Endeavor. (D.I. 832.) Medtronic’s proposed surreply is an improper attempt to take the last word on Abbott’s motion to lift the stay of injunction proceedings as to Medtronic’s Endeavor and thus should be denied.


Under the Court's Local Rules, Medtronic has no right to file a surreply. *See* Local Rule 7.1.2(b). Moreover, in this instance, there are no unusual facts or circumstances that militate in favor of permitting Medtronic to file one. Indeed, to the contrary, if Medtronic were permitted to file a surreply, it would cause unfair prejudice to Abbott.

While Medtronic contends that its surreply is necessary to address two alleged misstatements of fact in Abbott's reply brief—a contention that is totally incorrect—Medtronic's proposed surreply repeats and rehashes the same arguments that it made (or could have made) in its opposition brief. (D.I. 832.) Additionally, Medtronic's surreply belatedly raises new arguments in support of its request for more discovery and its improper equitable-estoppel defense. Furthermore, Medtronic proposes to submit well over 100 pages of new evidence as exhibits to its surreply. (*Id.*) If Medtronic were permitted to raise these new arguments and new evidence outside of the briefing schedule, Abbott would be denied adequate opportunity to address them and thus would be unfairly prejudiced. *Chambers v. Doe*, 453 F. Supp. 2d 858, 861 n.3 (D. Del. 2006) (granting motion to strike surreply where “the surreply belatedly raises arguments not raised in plaintiff's answering brief and that raising the issues outside the briefing schedule denies defendants the full opportunity to explore and address the arguments”). Accordingly, the Court should deny Medtronic's motion for leave to file a surreply.

Of Counsel:

J. Michael Jakes
 Gerald F. Ivey
 Michael A. Morin
 FINNEGAN, HENDERSON, FARABOW
 GARRETT & DUNNER, L.L.P.
 901 New York Avenue, N.W.
 Washington, D.C. 20001-4413
 (202) 408-4000

Dated: April 16, 2008


 Frederick L. Cottrell, III (#2553)
 cottrell@rlf.com
 Anne Shea Gaza (#4093)
 gaza@rlf.com
 RICHARDS, LAYTON & FINGER
 One Rodney Square
 P.O. Box 551
 Wilmington, Delaware 19899
 (302) 651-7509
 Attorneys for Plaintiffs Abbott Cardiovascular
 Systems Inc. and Abbott Laboratories Inc

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

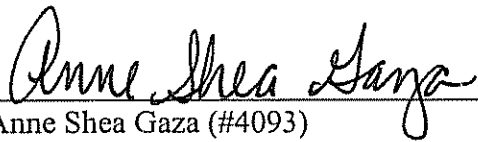
I hereby certify that on April 16, 2008, I caused to be served by hand delivery the foregoing document and electronically filed the same with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following:

Karen Jacobs Loudon, Esquire
Morris, Nichols, Arsht & Tunnell
1201 N. Market Street
P.O. Box 1347
Wilmington, Delaware 19899-1347

I hereby certify that on April 16, 2008, I have sent by Federal Express the foregoing document to the following non-registered participants:

Kevin S. Rosen, Esquire
Matthew Hoffman, Esquire
Anthony S. Newman, Esquire
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197

H. Mark Ryan, Esquire
Frederick S. Chung, Esquire
Gibson, Dunn & Crutcher LLP
1881 Page Mill Road
Palo Alto, CA 94304-1211


Anne Shea Gaza (#4093)
Richards, Layton & Finger, P.A.
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
(302) 651-7700
gaza@rlf.com